

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
WEYERHAEUSER COMPANY,)
(Smith Island Sort Yard),)
Appellant,)
v.)
PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)
Respondent.)

PCHB No. 1076

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

PER W. A. GISSBERG:

A formal hearing in Everett, Washington on January 14, 1977 came on regularly before all Board members on the appeal of a \$100.00 civil penalty arising from an alleged violation of Section 9.15(c) of respondent's Regulation I (airborne dust).

Appellant appeared through its attorney, Jane Hotneier; respondent by its attorney, Keith D. McGoffin.

Having heard the testimony and considered the exhibits and argument, and being fully advised, the Board makes the following

FINDINGS OF FACT

I

Respondent, pursuant to RCW 43.21B.260 has filed with this Board a certified copy of its Regulation I containing respondent's regulations and amendments thereto.

II

Weyerhaeuser Company (appellant) owns and operates a log sort yard on Smith Island in Snohomish County adjacent to the Snohomish River. A private dirt and gravelled access road of one-half mile leads to the yard from old Highway 99. The road is primarily used by log trucks delivering logs to appellant's yard and another yard operated by Timber Industries, Inc. The road is either owned by appellant or it has an easement for its use.

II

As a result of having received respondent's August 13, 1974 Notice charging appellant with violating Section 9.15, preventing particulate matter from becoming airborne, appellant acquired an old 1943 truck for use in watering the road and yard as a dust preventative. It was so used in 1975. As a result of a second Notice of Violation on April 29, 1976, appellant acquired, shortly thereafter, a newer secondhand truck and expended about \$8,000 to refurbish it for use as a 2,000 gallon water truck. Neither violation resulted in civil penalties.

III

Appellant not only purchased equipment in its dust preventative program but also established a schedule for applying Kraft pulp mill effluent (one percent solids) to the road and sort yard when needed

FINAL FINDINGS OF FACT,
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1 during dry weather. That schedule provided for wetting the areas on
2 three occasions during the work day, if conditions were hot and dry.

3 IV

4 On July 30, 1976, respondent's inspector observed airborne dust on
5 the access road and the sort yard caused by vehicular traffic.
6 Accordingly, he issued a Notice of Violation, followed by a \$100.00 civil
7 penalty, alleging a violation of Section 9.15(c) of respondent's
8 Regulation I, which provides:

9 It shall be unlawful for any person to cause or permit
10 untreated open areas located within a private lot or roadway
11 to be maintained without taking reasonable precautions to
prevent particulate matter from becoming airborne.

12 V

13 On the day of the alleged violation, appellant's schedule of watering
14 had been commenced at 6:30 AM by saturating the yard and road with six
15 truck tank loads. While the area was still fairly damp, the second
16 scheduled watering was commenced at approximately 10:30 AM and proceeded
17 until one and one-half tank loads had been applied, at which time the
18 watering was temporarily interrupted by a truck breakdown due to a burned
19 out starter. That part was removed, repaired and replaced by
20 approximately 2:00 to 2:30 PM, at which time the watering regimen was
21 resumed. It was at 1:00 PM that respondent's inspector observed the
22 airborne dust.

23 VI

24 Any Conclusion of Law hereinafter stated which may be deemed a
25 Finding of Fact is hereby adopted as such.

From these Findings the Pollution Control Hearings Board comes to

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 | these

2 | CONCLUSIONS OF LAW

3 | I

4 | The respondent's regulation is violated only if, under the facts
5 | presented to and found by this Board, appellant maintained open areas withi
6 | its private yard or roadway "without taking reasonable precautions" to
7 | prevent dust from becoming airborne.

8 | II

9 | Respondent proved a prima facie violation by showing that airborne
10 | dust from the facility could be seen. From that, a legitimate inference ca
11 | be made that "reasonable precautions" were not taken. The burden of
12 | proceeding or going forward with the evidence at that point is upon
13 | appellant to prove that it had taken "reasonable precautions" to preven
14 | dust from becoming airborne. We believe that appellant did take reasonable
15 | precautions and that the unforeseen breakdown did not thereby render its
16 | precautions unreasonable when it acted with dispatch and diligence in
17 | repairing the cause of the breakdown. Under some circumstances not present
18 | in this appeal it may very well be reasonably required that appellant stop
19 | vehicular and equipment movement to prevent the dust from becoming airborne

20 | III

21 | Appellant did not violate Section 9.15(c) of respondent's Regulation
22 | and the imposition of the civil penalty should be vacated.

23 | IV

24 | Any Finding of Fact which should be deemed a Conclusion of Law is
25 | hereby adopted as such.

26 | Therefore, the Pollution Control Hearings Board issues this

27 | FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

ORDER

The Notices of Violation and Civil Penalty are vacated.

DATED this 18 day of January, 1977.

POLLUTION CONTROL HEARINGS BOARD

Art Brown

ART BROWN, Chairman

W. A. Gissberg

W. A. GISSBERG, Member

Chris Smith

CHRIS SMITH, Member

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER